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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/880,190	06/12/2001	Dan Kalas	81206-243306	5821

7590 06/18/2003

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EXAMINER

GURZO, PAUL M

ART UNIT	PAPER NUMBER
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2881

DATE MAILED: 06/18/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/880,190

Applicant(s)

KALAS ET AL.

Examiner

Paul Gurzo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 March 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 and 34-36 is/are pending in the application.
- 4a) Of the above claim(s) 19-33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 and 34-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,12,13, and 34 are rejected under 35 U.S.C. 102(b) as being anticipated by Itakura (5,365,076).

Regarding claims 1,12, and 13, 076 teaches a radiation source (30) comprising an outer housing (70) having a fastener (72) that is configured to be opened, a substrate (80) having a front surface removably contained within the housing, and a radioactive deposit inherently having a radioisotope deposited upon the front surface (col. 4, line 63 - col. 6, line 24, col. 18, line 47 - col. 19, line 7, and Fig. 10 and 11).

Regarding claim 34, 076 teaches a radiation source (30) comprising an outer housing (70) having a fastener (72) that is configured to be opened, a substrate (80) having a front surface removably contained within the housing, and a radioactive deposit inherently having a radioisotope deposited upon the front surface as applied above. 076 also teaches that the primary object of the invention is to provide a radiation image recording apparatus, with which radiation images to be subjected to energy subtraction processing and radiation images to be subjected to superposition processing can be obtained easily (col. 4, lines 47-51), which teaches on the claimed calibration step. Further, it is known in the art of radiation sources that nuclear imaging is a type of radiation and, as such, is anticipated by 076.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-11, 14-18, and 35-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Itakura (5,365,076), in view of Peterson et al. (WO 01/84560).

Regarding claims 2-4 and 7, while the above applied art teaches the use of a substrate, they are silent to the claimed makeup. However, '560 teaches that the substrate can be made from any suitable material (i.e. flexible and radiopaque), including paper and plastic (page 6, lines 4-6). Having a first and second form factor is obvious to a substrate that is made of a flexible material. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the substrate of the a flexible material because it is well known in the art that flexibility will increase the ease of handling and it is known that plastic is a flexible material.

Regarding claims 5 and 6, '560 teaches the claimed two layers and it is an obvious matter of design choice to have the activity density of each layer substantially the same (page 9, lines 28-30).

Regarding claims 8 and 9, '560 teaches the use of a colorant that corresponds to the activity of the radioactive deposit (page 7, lines 4-12).

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Regarding claims 10 and 11, '560 teaches that claimed sealing layer (page 10, lines 2-5), and it is obvious that a binding agent exists to ensure proper sealing.

Regarding claims 14-16 and 35-36, the addition of a second substrate is obvious to the teachings of the prior art and it is obvious to produce a desired radioactive deposit. Further, '560 teaches the uniform activity distribution (page 9, line 16).

Regarding claims 17 and 18, the above-applied prior art teaches an outer housing configured to be opened, a flexible substrate contained within the housing that has a front surface, a radioactive deposit that has a radioisotope, binding agent, and colorant that is fixedly deposited upon the front surface, a portion of the deposit having two layers, and the appropriate colors of the deposit indicating the appropriate activity levels of the deposit.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Gurzo whose telephone number is (703) 306-0532. The examiner can normally be reached on M-Thurs. 7:30 - 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Lee can be reached on (703) 308-4116. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9318 for regular communications and (703) 872-9319 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

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PMG

June 12, 2003



JOHN R. LEE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2800